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Attorneys for Defendant
FATALITY, INC., d/b/a Fatal1ty, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOSHUA SMITH, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PEGATRON USA, INC., a California
corporation, ASROCK AMERICA, INC., a
California corporation, and FATALITY, INC.,
d/b/a Fatal1ty, Inc., a Missouri corporation,

Defendants.

Case No. 3:14-cv-01822-CRB

**ANSWER OF DEFENDANT
FATALITY, INC., d/b/a FATAL1TY,
INC. TO FIRST AMENDED CLASS
ACTION COMPLAINT**

1 Defendant Fatality, Inc., d/b/a Fatal1ty, Inc. ("Fatality"), by and through its attorneys, hereby
2 answers the First Amended Class Action Complaint of Plaintiff Joshua Smith ("Plaintiff" or
3 "Smith") filed on July 3, 2014.

4 **NATURE OF THE ACTION**

5 1. According to the FAC, the term "ASRock" refers to Defendant ASRock America,
6 Inc., which, for purposes of this Answer, will be referred to as "ASRock America." Defendant
7 Fatal1ty denies that it partnered with defendant ASRock America, in 2010 or ever. As to the
8 remaining allegations of this paragraph, Defendant Fatal1ty lacks knowledge or information
9 sufficient to form a belief about the truth of these allegations and on such basis denies them.

10 2. Defendant Fatal1ty denies that it played any role in the creation of the marketing
11 materials or product packaging referred to in this paragraph other than licensing the " Fatal1ty" mark
12 for use in connection with the ASRock Fatal1ty motherboards and denies the allegations of this
13 paragraph.

14 3. Denied.

15 **PARTIES**

16 4. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
17 the truth of these allegations and on such basis denies them. Said Defendant further denies that
18 plaintiff and/or the class he seeks to represent are entitled to any relief from this answering
19 defendant.

20 5. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
21 the truth of these allegations and on such basis denies them.

22 6. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
23 the truth of these allegations and on such basis denies them.

24 7. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
25 the truth of these allegations and on such basis denies them.

26 8. Defendant Fatal1ty admits that its principal place of business is as alleged in this
27 paragraph. Said defendant denies the remainder of the allegations in this paragraph.

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9. Defendant Fatal1ty admits that Plaintiff is a citizen of a different state than the

10. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about

11. Defendant Fatal1ty denies it conducts significant business in this District. As to the

9

12. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about

13. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about

14. Defendant Fatal1ty denies the first sentence of this paragraph. Defendant Fatal1ty

15. Defendant Fatal1ty admits that it entered into an agreement whereby Auravision

16. Defendant Fatallty admits that the press release referred to in this paragraph was

17. Denied.

18. Denied.

19. Defendant Fatal1ty denies that it was involved in creating, developing or producing

1 the representations or advertising statements at issue in the FAC relating to the ASRock Fatal1ty
2 motherboards, other than licensing the Fatal1ty name. Said Defendant further denies the allegations
3 of this paragraph.

4 20. Defendant Fatal1ty admits that the physical packaging of certain models of the
5 ASRock Fatal1ty motherboards contained, at one time, the following statement, among others:

6 "Boosts Networking Performance 5X."

7 "5X Networking Performance...feature Killer E2200 Intelligent
8 Networking Platform, which boosts networking performance up to 5X
9 for time-sensitive UDP (User Datagram Protocol)-based applications,
such as online games and high quality media streaming."

10 Except as so expressly admitted, Defendant Fatal1ty denies the allegations of this paragraph.

11 21. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
12 the truth of these allegations and on such basis denies them.

13 22. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
14 the truth of these allegations and on such basis denies them.

15 23. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
16 the truth of these allegations and on such basis denies them.

17 24. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
18 the truth of the allegations of the first sentence of this paragraph and on such basis denies them. This
19 answering Defendant admits the allegations of the second sentence of this paragraph. This
20 answering Defendant denies the allegations of the third sentence of this paragraph.

21 25. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
22 the truth of these allegations and on such basis denies them.

23 26. Defendant Fatal1ty denies that it was involved in creating, developing, making or
24 producing the representations or advertising statements at issue in the FAC relating to the ASRock
25 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering Defendant alleges
26 that it cannot be treated as the publisher or speaker of any information by another content provider
27 that is linked or appears on said Defendant's website. Said Defendant further denies the allegations
28 of this paragraph.

1 27. Defendant Fatal1ty admits that changes were made to statements made on the
2 www.asrock.com website along the lines alleged in this paragraph but such website is not created,
3 developed, hosted, maintained or owned by it. This answering Defendant alleges that it cannot be
4 treated as the publisher or speaker of any information by another content provider that is linked or
5 appears on said Defendant's website. Said Defendant further denies the allegations of this
6 paragraph.

7 28. Defendant Fatal1ty denies that it was involved in creating, developing, making or
8 producing the representations or advertising statements at issue in the FAC relating to the ASRock
9 Fatal1ty motherboards, other than licensing the Fatal1ty name. Defendant Fatal1ty lacks knowledge
10 or information sufficient to form a belief about the truth of these allegations and on such basis denies
11 them.

12 29. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
13 the truth of these allegations and on such basis denies them.

14 30. Defendant Fatal1ty denies that it was involved in creating, developing, making or
15 producing the representations or advertising statements at issue in the FAC relating to the ASRock
16 Fatal1ty motherboards, other than licensing the Fatal1ty name and denies the allegations of this
17 paragraph.

18 31. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
19 the truth of these allegations and on such basis denies them.

20 32. Defendant Fatal1ty denies that it was involved in creating, developing, making or
21 producing the representations or advertising statements at issue in the FAC relating to the ASRock
22 Fatal1ty motherboards, other than licensing the Fatal1ty name and denies the allegations of this
23 paragraph.

24 33. Defendant Fatal1ty denies that it was involved in creating, developing, making or
25 producing the representations or advertising statements at issue in the FAC relating to the ASRock
26 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
27 that it cannot be treated as the publisher or speaker of any information by another content provider
28 that is linked or appears on any website of this answering defendant. Said Defendant denies the

1 allegations of this paragraph.

2 34. Defendant Fatal1ty admits that changes were made to statements made on the
3 www.asrock.com website along the lines alleged in this paragraph but such website is not created,
4 developed, hosted, maintained or owned by it. Defendant Fatal1ty denies that it was involved in
5 creating, developing, making or producing the representations or advertising statements at issue in
6 the FAC relating to the ASRock Fatal1ty motherboards, other than licensing the Fatal1ty name. Said
7 Defendant denies the allegations of this paragraph.

8 35. Defendant Fatal1ty denies that it was involved in creating, developing, making or
9 producing the representations or advertising statements at issue in the FAC relating to the ASRock
10 Fatal1ty motherboards, other than licensing the Fatal1ty name. Said Defendant lacks knowledge or
11 information sufficient to form a belief about the truth of these allegations and on such basis denies
12 them.

13 36. Denied.

14 37. Defendant Fatal1ty denies that it was involved in developing or producing the
15 ASRock Fatal1ty motherboards or packaging, other than licensing the Fatal1ty name. Said
16 Defendant lacks knowledge or information sufficient to form a belief about the truth of these
17 allegations and on such basis denies them.

18 38. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
19 the truth of these allegations and on such basis denies them.

20 39. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
21 the truth of these allegations and on such basis denies them.

22 40. Defendant Fatal1ty denies that it was involved in the creation of any user manual for
23 any of the products at issue in the FAC. Said Defendant lacks knowledge or information sufficient
24 to form a belief about the truth of these allegations and on such basis denies them.

25 41. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
26 the truth of these allegations and on such basis denies them.

27 42. Defendant Fatal1ty denies that it was involved in creating, developing, making or
28 producing the representations or advertising statements at issue in the FAC relating to the ASRock

1 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
2 that it cannot be treated as the publisher or speaker of any information by another content provider
3 that is linked or appears on any website of this answering defendant. Said Defendant denies the
4 allegations of this paragraph.

5 43. Defendant Fatal1ty denies that it was involved in creating, developing, making or
6 producing the representations or advertising statements at issue in the FAC relating to the ASRock
7 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
8 that it cannot be treated as the publisher or speaker of any information by another content provider
9 that is linked or appears on any website of this answering defendant. Said Defendant denies the
10 allegations of this paragraph.

11 44. Defendant Fatal1ty denies that it was involved in creating, developing, making or
12 producing the representations or advertising statements at issue in the FAC relating to the ASRock
13 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
14 that it cannot be treated as the publisher or speaker of any information by another content provider
15 that is linked or appears on any website of this answering defendant. Said Defendant denies the
16 allegations of this paragraph.

17 45. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
18 the truth of these allegations and on such basis denies them.

19 46. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
20 the truth of these allegations and on such basis denies them.

21 47. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
22 the truth of these allegations and on such basis denies them.

23 48. Denied.

24 49. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
25 the truth of these allegations and on such basis denied them.

26 50. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
27 the truth of these allegations and on such basis denies them.

28 51. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about

1 the truth of these allegations and on such basis denies them.

2 52. Denied.

3 53. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
4 the truth of these allegations and on such basis denies them.

5 54. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
6 the truth of these allegations and on such basis denies them.

7 55. Denied.

8 **CLASS ALLEGATIONS**

9 56. Defendant Fatal1ty denies that this action may properly proceed as a class actions
10 under the provisions of any applicable law. Responding further, Defendant Fatal1ty lacks
11 knowledge or information sufficient to form a belief about the truth of these allegations and on such
12 basis denies them.

13 57. Denied.

14 58. Denied.

15 59. Denied.

16 60. Denied.

17 61. Denied.

18 62. Denied.

19 63. Defendant Fatal1ty lack knowledge or information sufficient to form a belief about
20 the truth of these allegations and on such basis denies them.

21 **FIRST CAUSE OF ACTION**
22 **Violation of Consumers Legal Remedies Act**
23 **Cal. Civ. Code §§ 1750, *et seq.***
(On Behalf of Plaintiff and the Class)

24 64. Defendant Fatal1ty hereby incorporates by reference its responses to the allegations
25 in each of the preceding paragraphs as if set out in full herein.

26 65. Defendant Fatal1ty denies that it engaged in the actions and/or conduct alleged in the
27 FAC and denies the allegations of this paragraph.

28 66. Admitted.

1 67. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
2 the truth of these allegations and on such basis denies them.

3 68. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
4 the truth of these allegations and on such basis denies them.

5 69. Denied.

6 70. Denied.

7 71. Denied.

8 72. Denied.

9 73. Defendant Fatal1ty denies that it was involved in creating, developing, making or
10 producing the representations or advertising statements at issue in the FAC relating to the ASRock
11 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
12 that it cannot be treated as the publisher or speaker of any information by another content provider
13 that is linked or appears on any website of this answering defendant. Said Defendant denies the
14 allegations of this paragraph.

15 74. Defendant Fatal1ty denies that it was involved in creating, developing, making or
16 producing the representations or advertising statements at issue in the FAC relating to the ASRock
17 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
18 that it cannot be treated as the publisher or speaker of any information by another content provider
19 that is linked or appears on any website of this answering defendant. Said Defendant denies the
20 allegations of this paragraph.

21 75. Denied.

22 76. Defendant Fatal1ty denies that it was involved in creating, developing, making or
23 producing the representations or advertising statements at issue in the FAC relating to the ASRock
24 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
25 that it cannot be treated as the publisher or speaker of any information by another content provider
26 that is linked or appears on any website of this answering defendant. Said Defendant denies the
27 allegations of this paragraph.

28 77. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about

1 the truth of these allegations and on such basis denies them.

2 78. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
3 the truth of these allegations and on such basis denies them.

4 79. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
5 the truth of these allegations and on such basis denies them.

6 80. Defendant Fatal1ty denies that it was involved in creating, developing, making or
7 producing the representations or advertising statements at issue in the FAC relating to the ASRock
8 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
9 that it cannot be treated as the publisher or speaker of any information by another content provider
10 that is linked or appears on any website of this answering defendant. Said Defendant denies the
11 allegations of this paragraph.

12 81. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
13 the truth of these allegations and on such basis denies them.

14 82. Denied.

15 83. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
16 the truth of the allegations in the first sentence of this paragraph and on such basis denies them. Said
17 answering defendant admits the allegations in the second sentence of this paragraph. Said answering
18 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
19 entitled to any remedy against this answering defendant.

20 **SECOND CAUSE OF ACTION**
21 **Violations of California's Unfair Competition Law**
22 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
(On Behalf of Plaintiff and the Class)

23 84. Defendant Fatal1ty hereby incorporates by reference its responses to the allegations
24 in each of the preceding paragraphs as if set out in full herein.

25 85. The allegations in this paragraph are conclusions of law and not allegations of fact.
26 Defendant Fatal1ty admits that the courts and the California legislature have stated the purpose of
27 the UCL and that all parties are bound by such expressions to the extent that the law so provides.
28 Except as so expressly admitted, Defendant Fatal1ty lacks knowledge or information sufficient to

1 form a belief about the truth of these allegations and on such basis denies them.

2 86. The allegations in this paragraph are conclusions of law and not allegations of fact.
3 Defendant Fatal1ty admits that the express language of the UCL speaks for itself. Except as so
4 expressly admitted, Fatal1ty lacks knowledge or information sufficient to form a belief about the
5 truth of these allegations and on such basis denies them.

6 87. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
7 the truth of these allegations and on such basis denies them.

8 88. Denied.

9 89. Defendant Fatal1ty denies that it was involved in creating, developing, making or
10 producing the representations or advertising statements at issue in the FAC relating to the ASRock
11 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
12 that it cannot be treated as the publisher or speaker of any information by another content provider
13 that is linked or appears on any website of this answering defendant. Said Defendant denies the
14 allegations of this paragraph.

15 90. Denied.

16 91. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
17 the truth of these allegations and on such basis denies them.

18 92. Defendant Fatal1ty denies that it engaged in the acts alleged in the FAC, denies any
19 conduct of this defendant was fraudulent or in any way improper and denies the allegations of this
20 paragraph.

21 93. Denied.

22 94. Denied.

23 95. Defendant Fatal1ty denies that it engaged in the acts on which the FAC is based,
24 denies any conduct of it was fraudulent or in any way improper and denies the allegations of this
25 paragraph. As to the remaining allegations in this paragraph, Defendant Fatal1ty lacks knowledge or
26 information sufficient to form a belief about the truth of these allegations and on such basis denies
27 them.

28 96. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about

1 the truth of the allegations in this paragraph and on such basis denies them. Said answering
2 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
3 entitled to any remedy against this answering defendant.

4 **THIRD CAUSE OF ACTION**
5 **Violation of False Advertising Law**
6 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
7 **(On Behalf of Plaintiff and the Class)**

8 97. Defendant Fatal1ty hereby incorporates by reference its responses to the allegations
9 in each of the preceding paragraphs as if set out in full herein.

10 98. The allegations in this paragraph are conclusions of law and not allegations of fact.
11 Defendant Fatal1ty admits that the express language of the FAC speaks for itself. Except as so
12 expressly admitted, Defendant Fatal1ty lacks knowledge or information sufficient to form a belief
13 about the truth of these allegations and on such basis denies them.

14 99. Defendant Fatal1ty denies that it was involved in creating, developing, making or
15 producing the representations or advertising statements at issue in the FAC relating to the ASRock
16 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
17 that it cannot be treated as the publisher or speaker of any information by another content provider
18 that is linked or appears on any website of this answering defendant. Said Defendant denies the
19 allegations of this paragraph.

20 100. Denied.

21 101. Defendant Fatal1ty denies that it was involved in creating, developing, making or
22 producing the representations or advertising statements at issue in the FAC relating to the ASRock
23 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
24 that it cannot be treated as the publisher or speaker of any information by another content provider
25 that is linked or appears on any website of this answering defendant. Said Defendant denies the
26 allegations of this paragraph.

27 102. Denied.

28 103. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
the truth of the allegations in this paragraph and on such basis denies them. Said answering

1 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
2 entitled to any remedy against this answering defendant.

3 **FOURTH CAUSE OF ACTION**
4 **Fraud in the Inducement**
5 **(On Behalf of Plaintiff and the Class)**

6 104. Defendant Fatal1ty hereby incorporates by reference its responses to the allegations
7 in each of the preceding paragraphs as if set out in full herein.

8 105. Defendant Fatal1ty denies that it was involved in creating, developing, making or
9 producing the representations or advertising statements at issue in the FAC relating to the ASRock
10 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
11 that it cannot be treated as the publisher or speaker of any information by another content provider
12 that is linked or appears on any website of this answering defendant. Said Defendant denies the
13 allegations of this paragraph.

14 106. Defendant Fatal1ty denies that it was involved in creating, developing, making or
15 producing the representations or advertising statements at issue in the FAC relating to the ASRock
16 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
17 that it cannot be treated as the publisher or speaker of any information by another content provider
18 that is linked or appears on any website of this answering defendant. Said Defendant denies the
19 allegations of this paragraph.

20 107. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
21 the truth of these allegations and on such basis denies them.

22 108. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
23 the truth of these allegations and on such basis denies them.

24 109. Defendant Fatal1ty denies that it was involved in creating, developing, making or
25 producing the representations or advertising statements at issue in the FAC relating to the ASRock
26 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
27 that it cannot be treated as the publisher or speaker of any information by another content provider
28 that is linked or appears on any website of this answering defendant. Said Defendant denies the
allegations of this paragraph.

1 110. Denied.

2 111. Denied.

3 112. Defendant Fatal1ty denies that it was involved in creating, developing, making or
4 producing the representations or advertising statements at issue in the FAC relating to the ASRock
5 Fatal1ty motherboards, other than licensing the Fatal1ty name. This answering defendant alleges
6 that it cannot be treated as the publisher or speaker of any information by another content provider
7 that is linked or appears on any website of this answering defendant. Said Defendant denies the
8 allegations of this paragraph.

9 113. Denied

10 114. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
11 the truth of the allegations in this paragraph and on such basis denies them. Said answering
12 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
13 entitled to any remedy against this answering defendant.

14 **FIFTH CAUSE OF ACTION DEFENDANT FATALITY**
15 **Breach of Express Warranties**
16 **(On Behalf of Plaintiff and the Class)**

17 115. Defendant Fatal1ty hereby incorporates by reference its responses to the allegations
18 in each of the preceding paragraphs as if set out in full herein.

19 116. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
20 ASRock Fatal1ty motherboards, this answering defendant did not create, develop or produce any of
21 the advertising statements at issue in the FAC, was not involved in creating product packaging. This
22 answering defendant alleges that it cannot be treated as the publisher or speaker of any information
23 by another content provider that is linked or appears on any website of this answering defendant.
24 Said answering defendant denies it made any statement referred to in the FAC that plaintiff contends
25 constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

26 117. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
27 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
28 any of the advertising statements at issue in the FAC, was not involved in creating product
packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of

1 any information by another content provider that is linked or appears on any website of this
2 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
3 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
4 this paragraph.

5 118. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
6 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
7 any of the advertising statements at issue in the FAC, was not involved in creating product
8 packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of
9 any information by another content provider that is linked or appears on any website of this
10 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
11 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
12 this paragraph.

13 119. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
14 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
15 any of the advertising statements at issue in the FAC, was not involved in creating product
16 packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of
17 any information by another content provider that is linked or appears on any website of this
18 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
19 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
20 this paragraph.

21 120. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
22 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
23 any of the advertising statements at issue in the FAC, was not involved in creating product
24 packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of
25 any information by another content provider that is linked or appears on any website of this
26 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
27 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
28 this paragraph.

1 121. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
2 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
3 any of the advertising statements at issue in the FAC, was not involved in creating product
4 packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of
5 any information by another content provider that is linked or appears on any website of this
6 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
7 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
8 this paragraph.

9 122. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
10 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
11 any of the advertising statements at issue in the FAC, was not involved in creating product
12 packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of
13 any information by another content provider that is linked or appears on any website of this
14 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
15 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
16 this paragraph.

17 123. Defendant Fatal1ty alleges that, other than licensing the "Fatal1ty" name for the
18 ASRock Fatal1ty motherboards, this answering defendant did not create, develop, make or produce
19 any of the advertising statements at issue in the FAC, was not involved in creating product
20 packaging. This answering defendant alleges that it cannot be treated as the publisher or speaker of
21 any information by another content provider that is linked or appears on any website of this
22 answering defendant. Said answering defendant denies it made any statement referred to in the FAC
23 that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of
24 this paragraph.

25 124. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about
26 the truth of the allegations in this paragraph and on such basis denies them. Said answering
27 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
28 entitled to any remedy against this answering defendant.

SIXTH CAUSE OF ACTION
Unjust Enrichment
(On Behalf of Plaintiff and the Class)

125. Defendant Fatal1ty hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

126. Denied.

127. Denied.

128. Denied.

129. Defendant Fatal1ty lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

AFFIRMATIVE DEFENSES

Defendant Fatal1ty hereby asserts the following affirmative defenses to Plaintiff's claims. Defendant Fatal1ty reserves the right to raise other defenses, affirmative or otherwise, that may become evident during discovery and during any other proceeding in this action. Fatality also reserves the right to amend and/or delete any affirmative defenses in the event that discovery indicates it may be appropriate to do so.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

130. As a first affirmative defense, Defendant Fatal1ty alleges that Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Immunity under Communications Decency Act, 47 U.S. C. § 230)

131. As a second affirmative defense, Defendant Fatal1ty alleges that it did not create or develop any of the advertising statements on which the claims in this action are based, and to the extent that any such statement is linked to or otherwise accessed by or through any website of Fatal1ty, said answering defendant is immune from liability and/or no claim can be brought against it based on such statement under the Communications Decency Act, 47 U.S.C. § 230.

1 **THIRD AFFIRMATIVE DEFENSE**
2 **(Failure to Mitigate Alleged Damages)**

3 132. As a third affirmative defense, Defendant Fatal1ty alleges that Plaintiff has not
4 mitigated its damages, if any.

5 **FOURTH AFFIRMATIVE DEFENSE**
6 **(Unconstitutionality)**

7 133. As a fourth affirmative defense, Defendant Fatal1ty alleges that the claims, to the
8 extent that they seek exemplary or punitive damages, violate defendant's rights to procedural due
9 process under the Fourteenth Amendment of the United Sates Constitution and, therefore, fail to
10 state a cause of action upon which punitive or exemplary damages can be awarded.

11 **FIFTH AFFIRMATIVE DEFENSE**
12 **(Reservation of Rights)**

13 134. As a fifth affirmative defense, Defendant Fatal1ty alleges that discovery has not yet
14 begun, and on the basis of such discovery, other affirmative defenses may become known or
15 substantiated. Defendant reserves the right to add affirmative defenses within a reasonable time
16 after the facts of said affirmative defenses may become known to Defendant.

17 **SIXTH AFFIRMATIVE DEFENSE**
18 **(Lack of Adequate Representation)**

19 135. As a sixth affirmative defense, Defendant Fatal1ty alleges that the named Plaintiffs
20 lack standing as representatives of the proposed class and do not adequately represent the putative
21 class members.

22 **SEVENTH AFFIRMATIVE DEFENSE**
23 **(Fails to Meet Rule 23)**

24 136. As a seventh affirmative defense, Defendant Fatal1ty alleges that this action does not
25 meet the requirements for class action treatment under Rule 23 of the Federal Rules of Civil
26 Procedure, or any other applicable law, including, but not limited to, failing to satisfy the
27 requirements of numerosity, commonality and predominance, typicality, and superiority. Plaintiffs
28 cannot prosecute this action on behalf of the putative class they purport to represent.

EIGHTH AFFIRMATIVE DEFENSE
(Defense of Other Defendants)

137. As an eighth affirmative defense, Defendant Fatal1ty incorporates and adopts each and every applicable defense asserted by any other defendant in this action.

WHEREFORE, Defendant Fatality , Inc., d/b/a Fatal1ty, Inc. prays as follows:

1. The Plaintiff take nothing by reason of its complaint and that judgment be entered in favor of Defendants.
2. That Defendant Fatality , Inc., d/b/a Fatal1ty, Inc. be awarded its costs of suit incurred in defense of this action; and,
3. For such other and further relief as the Court deems proper.

Dated: September 22, 2014

Respectfully submitted,

BAKER & McKENZIE LLP

By: /s/ Tod L. Gamlen

Tod L. Gamlen

Attorneys for Defendant

DEFENDANT FATALITY , INC., d/b/a
Fatal1ty, Inc.